



STATE OF CALIFORNIA  
**FRANCHISE TAX BOARD**  
Legal Branch  
P. O. Box 1720  
Rancho Cordova, CA 95741-1720

STEVE WESTLY  
Chair  
CAROLE MIGDEN  
Member  
DONNA ARDUIN  
Member

### **October 2004, Franchise Tax Board Litigation Roster**

All cases currently active and those recently closed are listed on the roster. Activity or changes with respect to a case appear in bold-face type. Any new cases will appear in bold-face type.

A list is also provided of new cases that have been added to the roster for the month as well as a list of cases that have been closed and will be dropped from the next report.

The Franchise Tax Board posts the Litigation Roster on its Internet site. The Litigation Roster can be found at: [www.ftb.ca.gov/law/Lit\\_roster.pdf](http://www.ftb.ca.gov/law/Lit_roster.pdf).

The Litigation Roster on the Internet site will be the latest version. It is normally revised on a monthly basis.

FRANCHISE AND INCOME TAX  
CLOSED CASES – OCTOBER 2004

**Case Name**

**Court Number**

Paine, Thomas H. & Teresa A. Norton

San Francisco Superior Court No. 324518

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FRANCHISE AND INCOME TAX  
NEW CASES – OCTOBER 2004

**Case Name**

**Court Number**

NONE

**FRANCHISE AND INCOME TAX  
MONTHLY REFUND LITIGATION ROSTER**

**OCTOBER 2004**

**ACKERMAN, PETER & JOANNE v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC296334

Filed – 05/23/03

**Court of Appeal, 2<sup>nd</sup> Appellate District, No. B178750**

*Taxpayer's Counsel*

*FTB's Counsel*

Holly Kendig, Christopher W. Campbell

Brian Wesley

O'Melveny & Myers, LLP

- Issues
1. Whether plaintiffs are entitled to a refund of taxes similar to that allowed by the Internal Revenue Service as the result of the settlement of a lawsuit against them for misappropriating the income of various partnerships.
  2. Whether plaintiffs filed timely claims for refund with respect to the years 1992 and 1993.
  3. Whether plaintiffs timely filed the suit for refund.

Years      1992 and 1993      Amount      \$4,912,037.26

Status      **Notice of Appeal filed by Plaintiffs on October 13, 2004.**

**AMERICAN GENERAL REALTY INVESTMENT CORP., INC. v. Franchise Tax Board**

San Francisco Superior Court Docket No. CGC03425690

Filed – 10/23/03

*Taxpayer's Counsel*

*FTB's Counsel*

Roy E. Crawford, Robert J. Waldow

David Lew

Heller, Ehrman, White & McAuliffe, LLP

- Issues
1. Whether dividends received from insurance subsidiaries are, as a matter of law and fact, nonbusiness income.
  2. Whether section 24344(b) controls the allocation of interest expense.
  3. Whether section 24425 was properly applied to allocate expenses to insurance company dividends.
  4. Whether the insurance subsidiaries constitute a separate unitary business of the taxpayer.
  5. Whether the increase in the income assigned to California fairly reflects the taxpayer's business in this state.

Year      1991      Amount      \$2,824,983.00

Status      **Trial held on October 5, 2004; Defendant's Supplemental Opening Brief filed on October 5, 2004; Plaintiff's Supplemental Stipulation of Facts; Supplemental Trial Brief with Exhibits and Stipulation of Facts with Exhibits filed October 5, 2004. On October 7, 2004, court trial continued to November 9, 2004, for further briefing.**



**FREIDBERG, EDWARD & TRACI E. REYNOLDS v. Franchise Tax Board**

San Francisco Superior Court Docket No. CGC-02-404182

Filed – 02/06/02

Court of Appeal, 1<sup>st</sup> Appellate District, No. A106315Taxpayer's Counsel

John E. Cassinat &amp; Ronald L. Carello

Cassinat Law Corporation

FTB's Counsel

Marguerite Stricklin

- Issues
1. Whether Plaintiffs' "horse breeding and racing business expenses" were deductible as business expenses in the years involved.
  2. Whether expenses incurred by plaintiffs in horse breeding and racing activities were deductible as business expenses in the years involved.

Years 1991 through 1994 Amount \$149,696.00

Status **Defendant/Appellant's Opening Brief filed on October 22, 2004.**

**FUJITSU IT HOLDINGS, INC. v. Franchise Tax Board**[Amdahl Corporation v. Franchise Tax Board] 120 Cal.App.4<sup>th</sup> 459

San Francisco Superior Court Docket No. 321296

Filed – 05/14/01

Court of Appeal, 1<sup>st</sup> Appellate District Court Div. 2, No. A101101 (FTB)Court of Appeal, 1<sup>st</sup> Appellate District Court Div. 2, No. A101203 (Amdahl)Court of Appeal, 1<sup>st</sup> Appellate District Court Div. 2, No. A102558 (Attorney's fees)

California Supreme Court No. S127167

Taxpayer's Counsel

Timothy K. Roake

Fenwick &amp; West LLP

FTB's Counsel

Kristian Whitten

- Issues
1. Whether Section 25106 was properly applied to the facts of this case in a manner which does not discriminate against foreign commerce.
  2. Whether Section 24411 was properly applied in this case.
  3. Whether Section 24411 discriminates against foreign commerce.
  4. Whether the amount received from the United Kingdom as a credit for amounts paid under the United Kingdom's Advanced Corporate Tax is a dividend for purposes of Sections 24411 and 25106 of the Revenue and Taxation Code.
  5. Whether the amount received from the United Kingdom as a credit for amounts paid under the United Kingdom's Advanced Corporate Tax is gross income.

Years 1988, 1989, 1991 and 1992 Amount \$2,935,439.00

Status **Petition for Review and Depublication request denied on October 20, 2004.**

**GALASKI, GREGORY JOHN v. Franchise Tax Board**

San Diego Superior Court Docket No. IC833950

Filed – 08/09/04

Taxpayer's Counsel

Gregory Galaski, In Pro Per

FTB's Counsel

Gregory S. Price

Issues 1. Whether Plaintiff has filed claims for refund for each of the years.  
2. Assuming claims for refund were filed whether there was an overpayment of tax.

Years 1999 through 2003 Amount \$13,092.37

Status **Notice of Case Management Conference scheduled for December 17, 2004, filed on October 20, 2004.**

**GENERAL MOTORS CORPORATION, et al. v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC269404

Filed – 03/06/02

Court of Appeal, 2<sup>nd</sup> Appellate District No. B165665

California Supreme Court No. S127086

Taxpayer's Counsel

Charles R. Ajalat

Law Office of Ajalat, Polley & Ayoob

FTB's Counsel

Stephen Lew, Donald

Currier & Joseph O'Heron

Issues 1. Whether gross receipts from the disposition of marketable securities were properly excluded from the sales factor.  
2. Whether interest income was properly characterized as business income.  
3. Whether dividends received with respect to stock representing less than a 50% voting interest were properly classified as business income.  
4. Whether the limitation on deductions prescribed by sections 24402 and 24410 resulted in unconstitutional discriminatory taxation.  
5. Whether various receipts from intangible assets were properly excluded from the sales factor.  
6. Whether research tax credits were properly limited to the entity incurring the expense.  
7. Whether a deduction was properly denied with respect to foreign country taxes withheld on dividends.  
8. Whether the taxpayer is entitled to an increased deduction with respect to depreciation on assets held by foreign country subsidiaries.  
9. Whether the taxes determined to be owing by the Franchise Tax Board were properly computed and assessed.

Years 1986 through 1988 Amount \$10,692,755.00

Status **Court's Order granting Petition for Review on October 13, 2004.**

**HAMEETMAN, FRED AND JOYCE v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC 305968

Filed – 11/12/03

Taxpayer's Counsel

Eric L. Troff, Esq.

Gibbs, Giden, Locher & Turner, LLP

FTB's Counsel

Donald Currier

Issue Whether Plaintiffs were entitled to a business bad debt reduction.

Years 1990 and 1993 Amount \$65,738.00

Status Trial scheduled for November 29, 2004. **Defendant's Statement in Opposition to Plaintiffs' Motion for Summary Judgment and Supporting Documents filed October 12, 2004. Plaintiffs' Reply to Defendant's Opposition to Motion for Summary Judgment and Supporting Documents filed on October 22, 2004. Defendant's Objection Documents filed October 27, 2004.**

**HARDIE, GEORGE G. v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC292256

Taxpayer's Counsel

Richard E. Posell, Gregory P. Korn  
Greenberg, Glusker, Fields, Claman,  
Machtlinger & Kinsella, LLP

Filed – 03/18/03

FTB's Counsel

Anthony Sgherzi  
George M. Takenouchi

Issue Whether Plaintiff was a resident of California for the year in issue.

Year 1993 Amount \$1,172,932.00

Status **Order to Show Cause re: Dismissal on October 26, 2004, Final Status Conference scheduled for December 14, 2004, Trial scheduled for December 20, 2004.**

**HYATT, GILBERT P. v. Franchise Tax Board**

Clark County Nevada District Court No. A382999

Taxpayer's Counsel

Thomas L. Steffen & Mark A. Hutchison  
Hutchison & Steffen  
H. Bartow Farr III

Filed - 01/06/98

FTB's Counsel

James W. Bradshaw  
McDonald, Carano, Wilson LLP  
Las Vegas, Nevada

Issues

1. Whether plaintiff was a resident of California from September 26, 1991 through April 2, 1992.
2. Whether the Franchise Tax Board committed various torts with respect to plaintiff and is subject to a claim for damages.
3. Whether the Nevada courts have or should exercise jurisdiction over the Franchise Tax Board.

Years 1991 and 1992 Amount \$13,204,611.00

Status Clark County District Court:  
Discovery proceeding. **Status Conference held on October 27, 2004, and continued to December 1, 2004.**

**JIBILIAN, TONY & DOROTHY v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC298685

Court of Appeal 2<sup>nd</sup> Appellate District Court No. B175952

Taxpayer's Counsel

Derek L. Tabone, Esq.  
Law Offices of Tabone, APC

Filed – 07/09/03

FTB's Counsel

Brian Wesley  
Elisa Wolfe-Donato

Issue Whether Plaintiffs have taxable income for the years involved.

Years 1999 through 2001 Amount \$209,742.00

Status **Plaintiff/Appellants' Request for Extension of Time to file brief filed on October 12, 2004. Plaintiff/Appellants' Extension granted on October 14, 2004; brief to be filed November 15, 2004.**

**JIM BEAM BRANDS CO. v. Franchise Tax Board**

San Francisco Superior Court No. CGC-02-408203  
Court of Appeal, 1<sup>st</sup> Appellate District Court No. A107209

Filed - 05/21/02

*Taxpayer's Counsel*

Edwin P. Antolin  
Silverstein & Pomerantz, Jordan M. Goodman  
Brian L. Browdy, Horwood, Marcus & Berk

*FTB's Counsel*

George C. Spanos

Issues

1. Whether the gain realized on the sale of all of the stock of a subsidiary was properly classified as business income.
2. Assuming the gain on the sale of all of the stock was business, whether the FTB properly computed the basis of the stock.

Year 1987 Amount \$133,042.00

Status **Plaintiff/Appellant's Appendix and Opening Brief filed; two volumes of Joint Appendix filed on October 21, 2004.**

**K-MART, CORPORATION, et al. v. Franchise Tax Board**

U.S. Bankruptcy Court for the Northern District of Illinois  
Bankruptcy No. 02-B02474 – Adversary Proceeding No. 03A01420

Filed – 04/11/03

*Taxpayer's Counsel*

Charles F. Smith  
Skadden, Arps, Slate, Meagher & Flom

*FTB's Counsel*

Michael Cornez  
Larry Fischer

Issues

1. Whether gain realized on the sale of 20+% interest in an Australian retailer, Coles, was business income.
2. Whether the gain realized on the sale of the interest in Coles was properly treated for AMT purposes.
3. Whether dividends and interest received with respect to Coles was business income.
4. Whether the taxpayer's request to account for its Canadian inventory on a LIFO basis was properly denied.
5. Whether two insurance subsidiaries were properly excluded from the combined report.
6. If the insurance subsidiaries were includible in the combined report, whether adjustments need to be made to the property and sales factors.
7. Whether proceeds from the short-term investment of financial assets were properly excluded from the sales factor.
8. Whether section 24402 is constitutional.



9. Whether adjustments based upon federal RAR's were correctly made.
10. Whether there were other unspecified errors in adjustments made or not made to the taxpayer's returns.
11. Whether an under-payment penalty was properly imposed.

<u>Years</u>	1986-1989, 1992-1994, 1999 and 2000	<u>Amount</u>	\$3,524,625.00 - Tax \$ 82,590.01 - Penalty
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Status Status Conference held on August 29, 2004. **Hearing continued to December 14, 2004.**

**LAVINE, ELIZABETH v. Franchise Tax Board**

Sacramento Superior Court Docket No. 04AS03347

Taxpayer's Counsel

Elizabeth Lavine, In Pro Per

Filed – 09/07/04

FTB's Counsel

Amy J. Winn

- Issues
1. Whether the suit for refund was filed timely.
  2. Whether Plaintiff was a resident of California in 1999.

<u>Year</u>	1999	<u>Amount</u>	\$4,579.91
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Status **Defendant's Answer to Complaint filed October 9, 2004.**

**THE LIMITED STORES, INC. AND AFFILIATES v. Franchise Tax Board**

Alameda Superior Court Docket No. 837723-0

Filed – 04/09/01

Court of Appeal, 1<sup>st</sup> Appellate District Court No. A102915

Taxpayer's Counsel

Edwin P. Antolin

Morrison & Foerster, LLP

FTB's Counsel

Joyce Hee

- Issues
1. Whether gross receipts from the sale of short-term financial instruments should be included in the sales factor.
  2. Whether gain realized on the sale of a partial interest in a limited partnership formed from three subsidiaries constitutes business income.

<u>Years</u>	1993 and 1994	<u>Amount</u>	\$2,185,718.00
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Status **Defendant/Respondent's letter containing decision rendered by the Arizona Court of Appeals in *Walgreen Arizona Drug Co. v. Arizona Dep't of Revenue* ("Walgreen") (September 23, 2004), 2004 WL 2110390 (Ariz.App. Div. 1) filed October 8, 2004.**

**THE LONG TERM INVESTMENT/Trustee JP Morgan Chase Bank v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC 312094

Filed – 03/12/04

Taxpayer's Counsel

Jeffrey G. Varga, Ethan Lipsig

Paul, Hastings, Janofsky & Walker, LLP

FTB's Counsel

Donald R. Currier

Issue Whether Revenue and Taxation Code section 17651 is preempted by 29 USC § 1144 (a).

Years 1994, 1997 through 2000 Amount \$2,905,255.00

Status Final Status Conference scheduled for April 21, 2005, and Trial to be held on May 5, 2005.  
**Status Conference (re: Scheduling re: Stay) completed on September 9, 2004.**

**MARKEN, DONALD W. & CLAUDINE H v. Franchise Tax Board**

San Francisco Superior Court Docket No. 302520  
 Court of Appeal, 1<sup>st</sup> Appellate Dist. No. A091644  
 California Supreme Court No. S 104529

Filed - 04/05/99

Taxpayer's Counsel  
 William E. Taggart, Jr.  
 Taggart & Hawkins

FTB's Counsel  
 Marguerite Stricklin

Issue Whether plaintiffs were residents of California in 1993.

Year 1993 Amount \$244,012.00

Status **Defendant's Response to Proposed Statement of Decision filed on October 15, 2004.**  
**Plaintiffs' Objection to Proposed Statement filed on October 15, 2004.**

**THE MCGRAW-HILL COMPANIES, INC., a New York Corporation v. Franchise Tax Board**

San Francisco Superior Court Docket No. CGC 03424737

Filed - 09/24/03

Taxpayer's Counsel  
 Jeffrey M. Vesely, Richard E. Nielsen & Annie H. Huang  
 Pillsbury Winthrop, LLP

FTB's Counsel  
 Anne Michelle Burr

Issues 1. Whether Plaintiff was entitled to use Marked-to-Market accounting allowed under the Internal Revenue Code when those provisions had not been adopted by California.  
 2. Whether other adjustments made or allowed by the Internal Revenue Service should be allowed by California.

Years 1993 and 1994 Amount \$606,744.00

Status Mandatory Settlement Conference rescheduled to November 17, 2004. Trial continued to December 6, 2004. **Discovery proceeding.**

**MICROSOFT CORPORATION v. Franchise Tax Board**

San Francisco Superior Court Docket No. 400444  
 Court of Appeal, 1<sup>st</sup> Appellate Dist. Div. 3 No. A105312

Filed – 10/19/01

Taxpayer's Counsel  
 James P. Kleier, Esq.  
 Preston Gates & Ellis, LLP

FTB's Counsel  
 Julian O. Standen



Status Respondents' and Cross-Appellants' Cross-Reply Brief filed on September 9, 2004 (appeal D043058). Court sends out oral argument waiver (appeal D043058) on September 9, 2004. Stipulation of Extension of Time filed on September 22, 2004; FTB's opening brief due November 23, 2004 (appeal D044362.)

**MONTGOMERY WARD LLC v. Franchise Tax Board**

San Diego Superior Court Docket No. GIC802767

Taxpayer's Counsel

Antolin, Pilar M. Sansone, Amy Silverstein  
Silverstein & Pomerantz, LLP

Filed – 12/30/02

FTB's Counsel

Gregory Price

- Issues
1. Whether proceeds from the sale, maturity or other disposition of short-term financial instruments were properly excluded from the sales factor.
  2. Whether section 24402 Rev. & Tax. Code is constitutional.

Years 1989 through 1994 Amount \$2,694,192.00

Status Status Conference held on May 14, 2004; Case deferred pending outcome of General Motors. Case Management Conference scheduled for September 17, 2004.

**NEW GAMING SYSTEMS, INC. & AKA INDUSTRIES, INC. v. Franchise Tax Board**

Sacramento Superior Court Docket No. 03AS05705

Taxpayer's Counsel

Spencer T. Malysiak  
Spencer T. Malysiak Law Corp.

Filed – 10/10/03

FTB's Counsel

Michael Cornez

- Issues
1. Whether New Gaming Systems, Inc., timely filed its suit for refund for the income year ended March 31, 1996.
  2. Whether a declaratory relief action can be brought to prevent the collection of tax.
  3. Whether a suit for refund can be maintained for a year in which the amount of tax has not been paid in full.
  4. Whether Plaintiffs are liable for California taxes on income generated from leases for operating Indian casinos.

Years 1996 and 1997 Amount \$90,773.05

Status **Judgment of Dismissal as to AKA Industries Inc., Following Order Sustaining Demurrer Without Leave to Amend filed on October 1, 2004.**

**ORDLOCK, BAYARD M. & LOIS S. v. Franchise Tax Board**

Los Angeles Superior Court Case No. BC278386

Court of Appeal, 2<sup>nd</sup> Appellate Dist. No. B169465

California Supreme Court No. S127649

Taxpayer's Counsel

Richard C. Field  
Bingham McCutchen LLP

Filed – 07/25/02

FTB's Counsel

Michael R. Weiss

Issue Whether the tax involved was timely assessed.

Year 1983 Amount \$12,350.00

Status **Defendant/Petitioner Reply to Answer to Petition for Review filed October 1, 2004. On October 15, 2004, the California Supreme Court extended time to grant or deny review.**

**PACIFIC TELESIS GROUP, INC. v. Franchise Tax Board**

San Francisco Superior Court Docket No. 319008

Filed – 02/20/01

Court of Appeal, 1<sup>st</sup> Appellate Dist. Div. 2 No. A104602

*Taxpayer's Counsel*

Allan L. Schare

McDermott, Will & Emery

*FTB's Counsel*

David Lew

Anne M. Burr

Issue What is the proper amount of depreciation deduction with respect to property acquired from former unitary affiliates?

Years 1987 through 1990 Amount \$9,960,422.00

Status **Oral Argument Waiver Notice sent on October 5, 2004. Plaintiff/Appellant's Request for Oral Argument filed on October 12, 2004. Defendant/Respondent's Request for Oral Argument filed on October 13, 2004.**

**THE PILLSBURY COMPANY, a Delaware Corp. v. Franchise Tax Board**

San Francisco Superior Court Docket No. 414931

Filed – 11/21/02

Appellate Court – 1<sup>st</sup> Appellate Dist. Court No. A105155

*Taxpayer's Counsel*

Jeffrey M. Vesely, Esq.

Richard E. Nielsen, Esq.

Pillsbury Winthrop, LLP

*FTB's Counsel*

David Lew

Issue Whether California definition of gross income incorporated amendments to the Internal Revenue Code dealing with losses of Alaska Native Corporation.

Years 1986 and 1987 Amount \$1,133,040.00

Status **Calendar Notice sent by the court on October 13, 2004, scheduling oral argument for November 2, 2004.**

**SHAFFRAN, ALLEN J. & TOBY v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC 316070

Filed – 05/25/04

*Taxpayer's Counsel*

W. Patrick O'Keefe, Jr.

W. Patrick O'Keefe, Jr. Incorporated

*FTB's Counsel*

Issue Whether the denial of a deduction for depreciation based upon a federal adjustment was proper.

Year 1992 Amount \$45,415.00 Tax  
\$ 9,083.00 Penalty

Status Discovery proceeding. **Case-Management Conference completed on September 23, 2004.**

**STAPLES, MARK A. v. Taxpayer Advocate Bureau, Franchise Tax Board, and  
State Board of Equalization**

Sacramento Superior Court Docket No.04AS03598

Filed – 09/03/04

Taxpayer's Counsel

FTB's Counsel

Mark A. Staples, In Pro Per

- Issues
1. Whether the method used by California to compute the tax owed by part-year resident violates various provisions of the United States Constitution.
  2. Whether the department's review and disposition of the plaintiff's objections to additional tax were properly handled.

Year 1998 Amount \$1,141.00

Status **Plaintiff personally served again a Summons and Complaint on October 7, 2004.**

**TOY'S "R" US, Inc. & Affiliates v. Franchise Tax Board**

Sacramento Superior Court Docket No. 01AS04316

Filed - 07/17/01

Court of Appeal, 4<sup>th</sup> Appellate Court No. C045386

Taxpayer's Counsel

FTB's Counsel

Eric J. Coffill

Michael J. Cornez

Carley A. Roberts

Issue Whether gross receipts from the sale of short-term financial investment were properly excluded from the documentation of the sales factor.

Years 1991 through 1994 Amount \$5,342,122.00

Status Plaintiffs/Appellants' Reply Brief filed on August 19, 2004.

**VENTAS, INC. & SUBSIDIARIES v. Franchise Tax Board**

San Francisco Superior Court Docket No. CGC03423154

Filed – 08/05/03

Taxpayer's Counsel

FTB's Counsel

Amy L. Silverstein

Paul Gifford

Silverstein & Pomerantz, LLP

Issue Whether Plaintiff elected to use the mark-to-market method of accounting for California purposes.

Year 1997 Amount \$205,874.00

Status Notice of Entry of Judgment for Plaintiffs filed July 12, 2004.

**YOSHINOYA WEST, INC. v. Franchise Tax Board**

Los Angeles Superior Court, Central District No. BC274343

Filed - 05/22/02

**Court of Appeal, 2<sup>nd</sup> Appellate Dist. No. B178751**

Taxpayer's Counsel

FTB's Counsel

Dwayne M. Horii

Donald R. Currier

William C. Choi

Rodriguez, Horii & Choi

- Issues
1. Whether Yoshinoya West, Inc. is involved in a unitary business with its Japanese parent company.
  2. Whether application of the standard allocation and apportionment provision of the Revenue and Taxation Code disproportionately taxed Yoshinoya West.

Years 1986 and 1987 Amount \$1,741,534.00

Status **Plaintiff/Appellant's Notice of Appeal filed on October 14, 2004.**  
**Defendant/Respondent's Statement of Decision (Revised) filed on October 15, 2004.**